

## **Possible Amendments to Title 16, California Code of Regulations Sections 405 and 3004 – Delegation of Certain Functions**

The Board's current regulations address the delegation of certain functions to the Executive Officer of the Board. Subdivision (e) of Section 405 [for professional engineering and professional land surveying] and Section 3004 [for geology and geophysics] delegates certain functions relating to administrative disciplinary matters under the Administrative Procedure Act (also referred to as the "APA"), which is part of the California Government Code, to the Executive Officer. These functions include the filing of accusations and statements of issues. However, they do not include allowing the Executive Officer to accept or reject administrative disciplinary decisions (stipulated settlements, proposed decisions, and default decisions); such action must be taken by the Board.

Over the last year, the Department of Consumer Affairs (DCA) has become very concerned with the length of time it takes for administrative disciplinary action to be taken against licensees. DCA has established a goal for all of its constituent boards, bureaus, commissions, and programs of an average of 12-18 months for cases to be processed from receipt of the initial complaint to the final decision becoming effective. Currently, the average for our cases is 60 months. We have been advised that our average is by far the oldest (the next closest is 36 months) and that this will be an issue that is raised during the Board's upcoming sunset review. While the previous backlog and aging of our complaint investigation cases is a contributing factor, the other main factor that is causing the aging is the length of time between Board meetings. In the past, Board meetings were held approximately every 6 to 8 weeks; they are now being held every 3 months. Holding all of the administrative disciplinary matters until a Board meeting can add several months to the aging of the cases.

DCA has recommended that the boards delegate to their Executive Officers the authority to accept default decisions and stipulated settlements that order the outright revocation or accept the voluntary surrender of the license. This would expedite the processing of administrative disciplinary matters and help to reduce the aging of the cases. Several other boards and commissions are currently considering taking this action or are already in the process of amending their regulations.

Staff believes this additional delegation to the Executive Officer would expedite the processing of administrative disciplinary cases, which would not only help to reduce the aging of our cases but would also provide for faster public protection. Default decisions order the revocation of the license and are done when the respondent has failed to respond after service of the accusation or statement of issues in the time required by law or has failed to appear a duly-noticed hearing on the manner. The respondents would still have the right under the law to appeal the issuance of a default decision to the Board. In stipulated settlements for outright revocation or voluntary surrender of the license, the respondents (subjects) are agreeing to give up their licenses so that they will no longer be able to practice professional engineering, professional land surveying, geology, or geophysics. Such stipulated settlements are done in egregious cases

where the respondent's continued practice presents a great threat to the health, safety, welfare, and property of the public. Stipulated settlements that included other orders, such as public reprimand, suspension, or a stayed revocation or stayed suspension with probationary conditions, would still be presented to the Board for acceptance, as would proposed decisions prepared by Administrative Law Judges following evidentiary hearings.

In order to delegate this authority to its Executive Officer, the Board would need to amend Title 16, California Code of Regulations sections 405 and 3004 through the formal rulemaking process, which includes a noticed period during which the public may provide comments on the proposal. Staff recommends that the Board move forward with the rulemaking process to amend these regulations.

**RECOMMENDED MOTION:**

Approve the proposed amendments to Title 16, California Code of Regulations sections 405 and 3004, as shown, and direct staff to begin the formal rulemaking process to amend the regulations.



## Title 16, California Code of Regulations

### 405. Delegation of Certain Functions.

(a) Whenever it is stated in these rules that the "Board" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the Board specifically has reserved the same for its own, exclusive action.

(b) Whenever it is stated the "executive officer" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the executive officer of the Board has the authority to act thereon.

(c) Any party in interest may appeal to the Board for review of the actions and decisions of the executive officer, except for those actions taken and decisions made pursuant to subdivision (e) of this section.

(d) Nothing herein prohibits the executive officer from redelegating to his/her subordinates as provided in Section 18572 of the Government Code.

(e) The power and discretion conferred by law upon the Board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code, issue subpoenas and subpoenas duces tecum, set and calendar cases for hearing and perform other functions necessary to the businesslike dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11400 through 11529 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said Code are hereby delegated to and conferred upon the executive officer, or to his/her his or her designee. Furthermore, the power and discretion conferred by law upon the Board to adopt default decisions and stipulated settlement agreements that order the outright revocation or accept the voluntary surrender of a license or certificate issued by the Board are hereby delegated to and conferred upon the executive officer, or to his or her designee. All appeals of actions taken or decisions made by the executive officer, or his or her designee, pursuant to this subdivision shall follow the procedures mandated by Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Note: Authority cited: Sections 6716 and 8710, Business and Professions Code.  
Reference: Sections 6714, 6775, 6775.1, 6776, 8707, 8780, and 8707 8780.1, Business and Professions Code; and Sections 11400 11370-11529 and 18572, Government Code.

## Title 16, California Code of Regulations

### 3004. Delegation of Certain Functions.

(a) Whenever it is stated in these rules and regulations that the "board" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the board specifically has reserved the same for its own, exclusive action.

(b) Whenever it is stated the "executive officer" may or shall exercise or discharge any power, duty, purpose, function, or jurisdiction, the executive officer for the board has the authority to act thereon.

(c) Any real party in interest may appeal to the board for review of the actions and decisions of the executive officer, except for those actions taken and decisions made pursuant to subdivision (e) of this section.

(d) Nothing herein prohibits the executive officer from re delegating duties to his or her subordinates as provided in Section 18572 of the Government Code.

(e) The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearings, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code, issue subpoenas and subpoenas duces tecum, set and calendar cases for hearing and perform other functions necessary to the businesslike dispatch of the business of the board in connection with proceedings under the provisions of Section 11500 through 11528 of the Government Code prior to the hearing of such proceeding; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code are hereby delegated to and conferred upon the executive officer, or, ~~in his or her absence from the office of the board,~~ to his or her designee. Furthermore, the power and discretion conferred by law upon the Board to adopt default decisions and stipulated settlement agreements that order the outright revocation or accept the voluntary surrender of a license or certificate issued by the Board are hereby delegated to and conferred upon the executive officer, or to his or her designee. All appeals of actions taken or decisions made by the executive officer, or his or her designee, pursuant to this subdivision shall follow the procedures mandated by Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Note: Authority cited: Section 7818, Business and Professions Code. Reference: ~~Section 7818~~ Sections 6714, 7860, and 7861, Business and Professions Code; and Sections 11370-11529 and 18572, Government Code.